

APPEAL NO. 032649
FILED NOVEMBER 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 3, 2003. The hearing officer determined that because the appellant's (claimant) request for a hearing on the Independent Review Organization's (IRO) decision on a proposed spinal surgery was not received by the Chief Clerk of Proceedings of the Texas Workers' Compensation Commission (Commission) within ten days of the receipt of the IRO decision, the request is not timely and the hearing officer lacks jurisdiction over the matter, and the IRO decision is the final decision and order of the Commission. The claimant appealed, asserting that his request was timely filed and that the IRO decision is flawed in that not all of the medical records were reviewed and the IRO misstates what the recommended procedure is.

DECISION

Reversed and remanded.

The hearing officer erred when he determined that he lacked jurisdiction to decide the matter due to the claimant's failure to timely request a hearing regarding the IRO decision.

The hearing officer found that the claimant did not timely dispute the IRO decision by filing a written appeal pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.308(v) (Rule 133.308(v)) within 10 days after receipt of the IRO decision. The hearing officer determined that the IRO decision was sent to the claimant on July 19, 2003, and by presumption, the claimant received the decision on July 24, 2003. We note that Rule 102.5(d) provides that for purposes of determining the date of receipt of written communications sent by the Commission, the Commission shall deem the received date to be five days after it was mailed. Using the dates found by the hearing officer, the claimant would have had to file his request for hearing on or before August 4, 2003, in order for it to be timely, as the 10th day was August 3, 2003, a Sunday. The record reflects that the Commission stamped the claimant's request for hearing as being received on August 5, 2003. See Hearing Officer's Exhibit No. 3. Using the abovedates, the hearing officer concluded that the claimant's request for hearing was not timely filed.

Hearing Officer's Exhibit No. 4 contains the three-page IRO decision. The report is clearly dated July 19, 2003, on the first page and that is the date which the hearing officer used in calculating the timeliness of the claimant's request. The hearing officer's calculation is against the great weight of the evidence presented in this matter. Page three of the IRO decision contains a certificate of service indicating that it was not mailed to the claimant until July 21, 2003. Using July 21, 2003, as the date the decision was certified to have been sent to the claimant, he would have been deemed to have

received it on July 26, 2003, pursuant to Rule 102.5(d), and the 10th day would have been August 5, 2003. The Commission received the claimant's request on August 5, 2003, and therefore the claimant's request was timely filed pursuant to Rule 133.308(v). We find that the hearing officer does have jurisdiction to decide this matter, because the claimant did timely file a request for hearing as is evidenced by Hearing Officer's Exhibit Nos. 3 and 4.

Because the hearing officer's determination that he lacked jurisdiction to decide this matter is reversed, we remand the case back to the hearing officer to decide the disputed issue and to issue the appropriate decision and order. On remand, the hearing officer shall afford the parties the opportunity to submit additional medical evidence in support of their respective positions and to fully develop the record.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge